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*Also admitted in Illinois

February 1, 1998

Via Hand Delivery

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

RE: Filing of the Comments of the Small Cable Business Association in Response to the Memorandum of Opinion and Order and Notice of Proposed Rulemaking. CS Docket No. 97-248 and RM NO. 9097

Dear Ms. Salas:

We enclose for filing an original and twelve copies of the above reference comments. We ask that you file stamp one of the copies as received and return it in the enclosed Federal Express envelope.

If you have any questions or need additional information, please call us.

Very Truly yours,

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:	)	
	)	
Implementation of the Cable	)	
Television Consumer Protection	)	
and Competition Act of 1992	)	CS Docket No. 97-248
	)	
Petition for Rulemaking of	)	RM No. 9097
Ameritech New Media, Inc.	)	
Regarding Development of Competition	)	
and Diversity in Video Programming	)	
Distribution and Carriage	)	

COMMENTS OF THE SMALL CABLE BUSINESS ASSOCIATION

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February 2, 1998

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SUMMARY

Access to steeply-discounted volume pricing through the use of buying groups has become critical to the financial health of small cable businesses. Access to these discounts fosters small cable's ability to compete with large, national multichannel programming services and helps to minimize rate increases for small cable's customers. Significant changes have occurred in the programming industry and in small cable's use of a significant buying group since the Commission first wrote the program access rules in 1993. Therefore, the Small Cable Business Association ("SCBA") recommends that the Commission consider the following changes to its substantive and procedural rules:

- **Exempt certain buying groups from joint and several liability requirements.** In the early years of the program access rules, several major vertically-integrated programmers had refused to sell to the small cable buying group, the National Cable Television Cooperative ("NCTC"), unless its members agreed to joint and several liability as permitted by the current rules. Many demanded joint and several liability for years as a tactic to simply avoid providing volume discounts through NCTC. In recent years, NCTC has become the cable industry's third largest purchaser of programming, representing 8.5 million subscribers and nearly half the nation's cable systems. Given the size and financial resources of NCTC, SCBA urges the Commission to exempt buying groups with these attributes from the rule that programmers can demand joint and several liability from its members as a precondition to selling to or through a buying group.

- **Establish an alternative dispute resolution mechanism for price discrimination complaints.** Claims that a vertically-integrated programmer impermissibly discriminates

in the price, terms or conditions of the sale or delivery of programming present relatively straight-forward issues for resolution. Prosecuting formal complaints before the Commission, however, represents a process that often costs more for individual small cable businesses to pursue than the cost savings they would realize from a successful resolution. SCBA recommends allowing qualified buying groups, such as NCTC, to have standing to pursue price discrimination complaints on behalf of its members. Further, the Commission should require vertically-integrated programmers to submit to qualified buying groups, subject to strict confidentiality restrictions, the rates, terms and conditions that they sell to competitors of the buying group's members. This simple and very limited disclosure requirement will foster many business-to-business resolutions, obviating the need for expensive and protracted proceedings before the Commission.

- **Establish prospective rate relief as a remedy for price discrimination violations.** The rules currently fail to provide meaningful relief to injured parties. Creating rules that establish certainty as to the remedy will also foster business-to-business resolution of price discrimination issues. SCBA proposes that the Commission require a vertically-integrated programmer that violated price discrimination restrictions to provide programming at a formulaically-determined reduced-rate for a two year period.

These simple but important proposals will breathe life into the program access rules for small cable, significantly reduce administrative burdens on the Commission by facilitating business-to-business resolutions and ultimately will benefit consumers in rural America who will have access to programming at more reasonable rates.

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COMMENTS OF THE SMALL CABLE BUSINESS ASSOCIATION

I. INTRODUCTION

The predominant practice of pricing programming using rate cards that incorporate steep volume discounts has historically created significant challenges and economic difficulties for small cable businesses and their customers. Without access to these discounts, small and independent cable businesses find it increasingly difficult to price their services at affordable and competitive levels. The Small Cable Business Association ("SCBA") and its nearly 300 members, representing nearly two million rural subscribers, have expressed serious concerns regarding program pricing throughout the Association's five-year history.

To attempt to gain access to comparable volume discounts, small cable businesses have engaged in self-help by developing the National Cable Television Cooperative ("NCTC"). Today, NCTC represents nearly half of the nation's cable systems that serve 8.5 million subscribers. This

makes NCTC the third largest cable television buying group in the country, second only to TCI and Time Warner.

Despite its size, NCTC's studies show that it pays up to 40% more for programming than TCI and Time Warner. Worse yet, the vertically-integrated owners of one of small cable's principal competitors, Primestar, control about 70% of the marquee programming services. SCBA believes that Primestar obtains its programming from its owners pursuant to sweetheart rates, terms and conditions.[1] Under current program access rules, NCTC's members should have access to programming at least pursuant to the same rates, terms and conditions afforded Primestar. They currently do not.

SCBA addresses these issues and simple modifications to current rules that will give life and meaning to the program access rules for small cable. Effective application of the program access rules is critical to accomplish two important goals: (1) preserve the ability of small cable to compete against national giants such as Primestar and DIRECTV; and (2) keep consumer prices for cable as low as possible in rural areas served by small cable.

II. JOINT AND SEVERAL LIABILITY SHOULD NOT APPLY TO CONTRACTS WITH OR THROUGH LARGE AND FINANCIALLY SECURE BUYING GROUPS.

A. Buying Groups Serve a Vital Function.

Programmers have developed a virtually uniform scheme of deep-discount volume pricing of programming. Typically, a small, independent operator pays 50% to 100% more for programming than companies the size of TCI or Time Warner. A recent study by NCTC reveals that

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[1] *Small Cable Business Association Petition to Deny*, In re: Application of MCI Telecommunications Corporation and PRIMESTAR, LHC, INC., File No.: 106-SAT-AL-97 (filed September 24, 1997) ("*Primestar Petition*") at pp. 20 - 21.

for a sample of 25 major programming services, the largest MSOs pay about $29.16. An independent operator pays $44.04, or 51% more. Buying groups allow small cable businesses access to programming at lower rates.

The use of buying groups can have profound impact on small cable rates. Take ComSouth TeleCable that serves about 6,000 subscribers in Perry, Georgia, a rural community nestled in southern Georgia. More than three years ago, ComSouth TeleCable joined NCTC. The resulting cost reductions were so significant that ComSouth was able to provide service for more than the next three years without having to increase rates. Any cost savings from enhancing the efficacy of large buying groups like NCTC can have a profound impact on limiting future rate increases in rural America.

B. NCTC is the Third Largest Purchaser of Programming.

NCTC was founded in 1985 to allow small cable access to meaningful volume discounts. This buying group has grown dramatically over recent years. The following table shows NCTC's significant growth since the initial adoption of the program access rules:

Year	Members	Subscribers Served (Millions)	Programming Contracts	Programming Fees (Millions)
1992	320	1.8	15	$8.3
1993	366	2.1	18	$11.7
1994	422	2.4	26	$19.2
1995	582	5.1	38	$45.2
1996	745	6.7	49	$114.1
1997	839	8.5	62	$156.0

NCTC's growth in recent years has resulted from its ability to obtain contracts with all vertically-integrated programmers. During the years initially following adoption of the program access rules, many vertically-integrated programmers refused to offer volume discounts through NCTC, claiming that absent agreement by all NCTC members to assume joint and several liability for all other members, the program access rules did not require them to offer volume discounts through NCTC. Eventually all vertically-integrated programmers were persuaded to offer programming through NCTC. The most significant growth in NCTC's membership began in 1995 after major programmers, including Viacom, Turner and Time-Warner, reluctantly began offering their programming through NCTC in response to political jawboning.

NCTC has legitimate concerns that major programmers with contracts expiring over the next few years may revert to their prior conduct of escaping the reach of the program access rules by requiring joint and several liability of all NCTC members as a precondition to renewing their contracts. By avoiding the use of buying groups, programmers can avoid passing through the high-volume discounts to small cable businesses.

C. The Role of Joint and Several Liability.

When it adopted the initial program access rules, the Commission faced vigorous opposition from programmers who used the potential financial risk of dealing with buying groups as their basis for objection.[2] As a result, the Commission crafted rules that allowed programmers to choose the

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[2]*First Report and Order*, In the Matter of Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992, Development of Competition and Diversity in Video Programming Distribution and Carriage, MM Docket no. 92-265 (released April 30, 1993) ("*Report and Order*") at ¶ 89.

type of contractual relationship they would have with buying groups. Programmers could choose to: (1) deal directly with the buying group where they rely directly on the buying group for payment of all obligations;[3] or (2) they could contract through the buying group directly with the members, as long as the members agreed to joint and several liability.[4] Both options attempt to minimize or eliminate the default risk of programmers. This initial scope appears overly broad, however, at the time the Commission promulgated these rules, no large buying group existed.

At a maximum, programmers should face no greater default risk when dealing with or through a buying group than they would dealing with the individual members. Consequently, rules that seek to eliminate default risk are unnecessary. Rules that seek to eliminate default risk in a manner that allows programmers to avoid the use of buying groups altogether violate public policy. The current rules fall into the latter category. On the other hand, however, SCBA recognizes that rules requiring programmers to deal with all buying groups may subject programmers to increased default risk if the buying group is not well established and does not have adequate funds to compensate for member defaults. Consequently, SCBA proposes a specific set of qualification requirements to exempt from any joint and several liability requirements only well established and financially secure buying groups.

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[3]47 CFR § 76.1000(c)(1) "[buying group] agrees to be financially liable for any fees due pursuant to a satellite cable programming, or satellite broadcast programming, contract which it signs as a contracting party as a representative of its members or whose members, as contracting parties, agree to joint and several liability;"

[4]*Id.*

D. All Vertically-Integrated Programmers Currently Deal with NCTC Without Joint and Several Liability.

SCBA anticipates opposition from programmers to any change in the joint and several liability requirement. When weighing that opposition, the Commission should compare it to current practices in the industry.

Vertically-integrated programmers lack standing to object to rules that carefully craft the exemption. The Commission must remember that all vertically-integrated programmers currently have contracts with NCTC and its members. None of those current contracts require joint and several liability of the members. The current business practices of vertically-integrated programmers impeach any objection programmers may make to limiting the applicability of the joint and several liability rules.

Vertically-integrated programmers should have no concerns regarding the financial track record of NCTC. In its 14-year history, NCTC has never defaulted on a payment to any programmer. Programmers actually receive payment more quickly through NCTC than they do through individual payments from MSOs.

The growth and development of large and financially secure buying groups such as NCTC provide the impetus for changing the 1993 program access rules to reflect current business practices. The rules as crafted, do not reflect the reality of NCTC's agreements with programmers. NCTC has successfully used hybrid contracts that typically place initial payment responsibility on NCTC, not individual members. Individual members are liable to NCTC for payment, and, under certain circumstances (the execution of a "Member Guarantee"), individual members could become responsible directly to programmers. Programmers have used this latter provision to insist on

requiring joint and several liability as a pre-condition in order to avoid selling to NCTC. Because of NCTC's structure and practice with respect to member liability in its contracts, programmers are able to require joint and several liability as a method to avoid selling to NCTC at prices with discounts worthy of 8.5 million subscribers, even though NCTC's contracts afford programmers maximum financial protection.

E. Buying Groups that Possess Sufficient Financial Reserves Should be Exempt from Joint and Several Liability Requirements.

Rather than eliminate the joint and several liability rules altogether, SCBA recommends that the Commission modify its rules to exempt members of certain buying groups from joint and several liability under certain circumstances. Buying groups having sufficient financial security should not be required to supply joint and several payment guarantees by its members. SCBA recommends that the Commission use a dual-component qualification standard to identify qualified buying groups:

1. **Size.** A buying group must have sufficient size in order to diversify the risk of an individual member default. SCBA recommends that a qualified buying group have member systems that serve an aggregate of at least 5 million subscribers.

2. **Financial Reserves.** A buying group must have liquid reserves (e.g., cash or cash equivalents) or readily accessible credit facilities (e.g., letters of credit or lines of credit), or any combination thereof, to compensate for a one month default of the buying group's largest member.

This dual qualification standard should afford programers sufficient protection against a default by the buying group or its members. Additionally, the standards represent simple and objective

measures that avoid embroiling the Commission in subjective disputes regarding the creditworthiness of specific buying groups. SCBA supplies the proposed changes to the regulation as Exhibit A.

F. Refusal to Contract with or Through a Qualified Buying Group Should Constitute an Unreasonable Refusal to Deal.

Several programmers have refused to deal with NCTC because NCTC's contract did not reflect the precise relationship that the programmer purportedly sought (e.g., is the contract with the buying group or the members or both). Because the default risk of dealing with a qualified buying group is no greater, and likely less than, dealing with the members individually, the Commission should restrict the ability of a programmer to flatly refuse to deal with a buying group because of the contract the buying group offers.

For example, most of NCTC's contracts create a relationship with both the buying group and the individual members. Every month, even though the payment responsibility falls on the members, NCTC collects and remits the money to the programmers. If a member is delinquent in paying NCTC, NCTC uses its own money and pays the programmer. If a late-paying member remains delinquent, then the programmer faces risk of default on <u>future</u> services it delivers. That risk, however, only attaches after NCTC notifies the programmer that a member has defaulted on its payment to the buying group. If the programmer promptly deauthorizes that cable system (electronically turns off its descrambler), the programmer eliminates any default risk by not continuing to sell to that cable system. NCTC pays all fees incurred up to the date it notifies the programmer.

This contract, while fully protecting the programmer from member default, fails to fit neatly into the Commission's regulations. Consequently, the Commission should require that a programmer's refusal to contract with a buying group based on the type of contract (e.g., with the buying group, with the members or a hybrid) would constitute an impermissible act under the program access rules.

III. PROGRAM ACCESS RULES LACK MEANINGFUL ENFORCEMENT PROVISIONS FOR SMALL CABLE.

A. Small Cable Requires Meaningful Enforcement Provisions.

Without affordable enforcement mechanisms, the best crafted substantive program access rules will fail to provide meaningful relief for small cable businesses. Investigation and prosecution of a program access complaint, especially with the discovery process proposed by Ameritech, will cost operators thousands, if not tens of thousands of dollars in legal fees. For most small systems, the cost of pursuing a formal program access complaint soon outweighs any potential benefit of winning. Consequently, as the Commission examines the procedural issues raised by Ameritech, it should also examine alternative methodologies to provide small cable businesses with procedural relief.

B. Small Cable Faces Price Discrimination.

In its *NPRM*[5], the Commission refers to price discrimination and access to programming complaints interchangeably. They are not. Price discrimination requires a specific set of proofs that

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[5]*Memorandum Opinion and Order and Notice of Proposed Rulemaking*, CS Docket No. 97-248, RM No. 9097, (released December 18, 1997) ("*NPRM*").

are relatively straight-forward. On the other hand, program access complaints, typically involving exclusivity, require an entirely different, and more complex, set of proofs.

The distinction between price discrimination and program access complaints is important for small cable businesses. Small cable often encounters price discrimination issues. Consequently, the relative simplicity of price discrimination complaints and the barrier to relief posed by the cost of pursuing the complaints should compel the Commission to establish a relatively simple procedure for the resolution of price discrimination allegations.

C. Rules Should Facilitate Business-to-Business, not Regulatory Agency Resolution.

The Commission should focus its efforts on facilitating dispute resolution between the parties before they need to file a complaint with the Commission. Rather than debate whether to limit the Commission's time to decide disputes or whether to allow discovery during those proceedings, many price discrimination complaints could likely be resolved without requiring Commission intervention if the Commission required the programmers to supply critical information to the complaining party.

1. Require Disclosure of Pricing Information.

Under current regulations, when an operator suspects that a vertically-integrated program supplier provides programming to a competitor of a cable system at discriminatory rates, terms or conditions, the operator only has the right to ask for relevant information. The small cable business cannot require the program provider to reveal this critical, yet straight-forward data. SCBA strongly urges the Commission to require vertically-integrated program providers to disclose program cost information that would likely facilitate private resolution of price discrimination complaints.

2. Give Qualified Buying Groups Standing to Require Information Disclosure.

SCBA recognizes the extreme veil of secrecy that program providers use to enshroud their program rate structures. A broad information disclosure requirement to every operator who alleges a potential price discrimination violation will meet stiff resistance from programmers. SCBA proposes a middle-ground solution -- limiting the mandatory pre-complaint information disclosure to qualified buying groups.

Small cable's buying group, NCTC currently represents nearly half the nation's cable systems. Those systems serve about 8.5 million subscribers. This buying group provides the vehicle for small cable to attempt to access true volume discounts. Small cable has raised allegations of impermissible price discriminations in its *Petitions to Deny* in the two Primestar license transfer and change of control applications currently pending before this Commission.[6] This price discrimination, with respect to NCTC's members, exists nationally because Primestar provides competition nationally. If NCTC pursued a program access complaint against each of Primestar's vertically-integrated programmer members, it would require five separate complaints. If NCTC's member systems, on the other hand, would pursue the same objective, they would have to file about 27,000[7] complaints to accomplish the same result on a system-by-system basis.

Providing NCTC with standing to pursue price discrimination complaints on behalf of all or part of its members as a class not only produces administrative efficiencies on an enormous scale,

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[6]*Primestar Petition* at pp. 20 - 21.

[7]NCTC represents approximately 5,400 cable systems multiplied by the five vertically-integrated programmer members of Primestar.

but it also severely limits any mandatory distribution of sensitive programming rates, terms and conditions. SCBA proposes that the Commission only require pre-complaint filing disclosure of programming rates, terms and conditions to buying groups that qualify for exemption from the joint and several liability obligations under the terms previously proposed. This disclosure would take place under strict confidentiality restrictions currently imposed by Commission regulations.[8] Further, the buying group could only request such information at reasonable intervals (e.g., no more frequently than every 6 months).

Requiring disclosure of programming rates, terms and conditions does not represent a radical departure from current requirements. Today, small cable businesses can request that vertically-integrated programmers provide them with programming rates, terms and conditions afforded to their competitors.[9] Programmers, however, have the option of ignoring this request and allowing a small cable business to file a program access complaint based on information and belief. This may appear a fair trade-off. It is not.

Large programmers recognize that by requiring all small cable businesses seeking relief to file formal complaints at the Commission, they know they will almost never face a program access complaint. Why? The reason is simple — economics. Most vertically-integrated programmers belong to some of the largest media giants in the world. Most small cable businesses lack the financial wherewithal to sustain a David v. Goliath battle at the Commission. Further, the cost of prosecuting a program access complaint usually far exceeds the benefits that will flow to a small

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[8]See Exhibit A for proposed rule revisions.

[9]47 CFR § 76.1002(b).

system because of its limited number of subscribers. The Commission should modify the rules so that a party with access to widely disparate economic resources cannot effectively evade the program access rules by merely refusing to provide the simple and straight-forward data requested. SCBA's proposal solves that problem for nearly half of the cable systems in the country — including most of the non-vertically integrated small systems.

IV. THE COMMISSION SHOULD ORDER PROSPECTIVE RATE RELIEF AS ONE REMEDY FOR VIOLATIONS.

A. Small Operators Need Simplified Relief Provisions.

In addition to small cable's need for greater ability to obtain resolution of program access concerns without costly formal processes, small cable also needs a simplified and less costly vehicle to remedy abuses of the program access provisions. Ameritech suggests that the Commission adopt a system of damages or fines that inure to the benefit of the victimized cable provider.[10] SCBA agrees with the concept of directing relief towards the injured party. SCBA disagrees with a system, however, that would require a case-by-case adjudication of damages.

Adopting a simple system of liquidated damages would encourage resolution of program access disputes, rather than require yet another expensive and lengthy proceeding to measure the precise amount of damage inflicted, a process most small cable businesses would find unaffordable. Further, if the culpable program provider knows the remedy it will face at the Commission, it will have greater incentive to settle the matter between the parties before a complaint is even filed at the Commission.

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[10] *NPRM* at ¶ 12.

B. Prescribing Rates for a Fixed Period Provides A Meaningful Measure of Liquidated Damages.

When crafting an appropriate remedy for violation of price discrimination complaints, the Commission must remember two critical factors: (1) the Commission's complaint process for vertically-integrated programmers pits small independent cable businesses and entities like NCTC against the giants among the American Keiretsu of media conglomerates, all of which have infinitely greater financial resources; and (2) the most effective result is one that fosters future stability between the disputing parties. SCBA recommends an approach that provides meaningful relief to small cable.

The Commission should require a vertically-integrated programmer found to have violated the price discrimination prohibitions of the program access rules to provide to the complaining cable operator programming at a discounted rate for a two-year period following the Commission's decision. The programmer would compute the price during this two-year period as the lower of: (1) 80% of the price it charges the competing provider at the time the complaint was filed; or (2) 80% of the price it charges the competing provider after the date of the Commission's decision. The Commission must fix a maximum rate as of the date of its decision in order to avoid the programmer artificially raising the cost of the programming to the competitor. The Commission must recall that in many cases, especially those faced currently by small cable with respect to PRIMESTAR, the vertically-integrated programmer owns the competitor that receives the favorable programming rate. Consequently, the programmer has the ability to avoid future rate reductions by raising the price it sells to its affiliate. If unchecked, this would allow the programmer to avoid any consequence of its improper conduct.

V. CONCLUSION

The Commission's program access rules have not worked effectively for small cable businesses for the past four years. The problems flow mostly from the inability of small cable to effectively and economically enforce these provisions. The Commission has before it today suggestions that would do nothing for small cable. They would only make the formal complaint process lengthier and costlier. This does not help small cable. Rather, it will hurt small cable.

SCBA has suggested innovative and meaningful procedural changes that balance the interests of small cable businesses and programmers. By allowing group representation, requiring candid disclosure of critical information and establishing a standard remedy, the Commission could facilitate many business-to-business resolutions of these issues, avoiding the need for expensive and lengthy Commission processes. SCBA strongly encourages the Commission to implement SCBA's proposals, as well as exempt qualified buying groups from a meaningless yet harmful joint and several liability requirement.

Respectfully submitted,
SMALL CABLE BUSINESS ASSOCIATION

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February 2, 1998

EXHIBIT A
PROPOSED REGULATIONS
Proposed Regulations Presented in Italics

§76.1000 - Joint and Several Liability Provisions

(c) Buying groups. The term "buying group" or "agent," for purposes of the definition of a multichannel video programming distributor set forth in paragraph (e) of this section, means an entity representing the interests of more than one entity distributing multichannel video programming that:

(1) Agrees to be financially liable for any fees due pursuant to a satellite cable programming, or satellite broadcast programming, contract which it signs as a contracting party as a representative of its members or whose members, as contracting parties, agree to joint and several liability; and

(2) Agrees to uniform billing and standardized contract provisions for individual members; and

(3) Agrees either collectively or individually on reasonable technical quality standards for the individual members of the group.

(l) Qualified buying groups. The term "qualified buying group" or "qualified agent," for purposes of the definition of a multichannel video programming distributor set forth in paragraph (e) of this section , means an entity representing the interests of more than one entity distributing multichannel video programming that:

(1) Purchases programming on behalf of multichannel video programing distribution systems that serve at least 5 million customers;

(2) Holds liquid reserves (e.g. cash or cash equivalents) or readily accessible credit facilities (e.g., letters of credit or lines of credit), or any combination thereof, sufficient to compensate for a one-month default in payment by the qualified buying group's largest member;

(3) Agrees to be financially liable for any fees due pursuant to a satellite cable programming, or satellite broadcast programming, contract which it signs as a contracting party as a representative of its members, or whose members, as contracting parties agree to liability for their own individually created liability, or ;

(4) Agrees to uniform billing and standardized contract provisions for individual members; and

(5) Agrees either collectively or individually on reasonable technical quality standards for the individual members of the group.

§76.1002 Specific unfair practices prohibited

(g) Any satellite cable programming vendor in which a cable operator has an attributable interest, or satellite broadcast programming vendor in which a cable operator has an attributable interest, that refuses to sell to or through a qualified buying group because it objects to the form of contract used by the buying group and where the form of contract is widely used by other programmers who sell to or through the qualified buying group, such refusal to enter into a contract with the qualified buying group shall constitute a violation of this section.

(e) Multichannel video programming distributor. The term "multichannel video programming distributor" means an entity engaged in the business of making available for purchase, by subscribers or customers, multiple channels of video programming. Such entities include, but are not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, a television receive-only satellite program distributor, and a satellite master antenna television system operator, as well as buying groups, *qualified buying groups* or agents of all such entities.

§76.1005 Alternative Resolution Methodology

(a) A qualified buying group or qualified agent may submit a written request to a satellite cable programming vendor in which a cable operator has an attributable interest, or satellite broadcast programming vendor, that supplies programming to a multi-channel video programming distributor in competition with any one or more members or customers of the qualified buying group, that the vendor disclose the prices, terms and conditions of sale or delivery of satellite cable programming or satellite broadcast programming to the competing distributor.

(b) A vendor receiving a request pursuant to the provisions of paragraph (a) of this section must provide a written response to the requesting qualified buying group or qualified agent within 15 days following the date of the request. The vendor must respond with specificity, providing detailed information governing the prices, terms and conditions of sale or delivery of its programming to the identified competing distributor.

(c) Failure by the vendor to provide the response set forth in paragraph (b) of this section shall constitute a violation of the price discrimination prohibitions outlined in section 76.1002(b).

(d) Vendors may designate any disclosed materials as proprietary, requiring the qualified buying group or qualified agent to treat the information in the manner prescribed by section 76.1003(h).

§76.1003 Adjudicatory Proceedings

(s) Remedies for violations

(3) If the Commission determines that a vendor has impermissibly discriminated in the pricing, terms or conditions of program sale or delivery, the vendor shall as of the date of the Commission's order, reduce the price of the program(s) at issue for a 24-month period to the lower of:

(i) 80 percent of the price it charged at the time the program access complaint was filed with the Commission; or

(ii) 80 percent of the price it charges the competing provider at any time within 24 months after the date of the Commission's decision.

The vendor shall make such price available to the complaining party, or in the event of a complaint brought by a buying group or a qualified buying group, to the members or customers of the buying group.